

No. 2930.

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United States  
Circuit Court of Appeals,  
FOR THE NINTH CIRCUIT.

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Wong Chung,

*Appellant,*

*vs.*

The United States of America,

*Appellee.*

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BRIEF OF APPELLEE.

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ALBERT SCHOONOVER,  
*United States Attorney;*

CLYDE R. MOODY,  
*Assistant United States Attorney;*  
*Attorneys for Appellee.*

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## BRIEF OF APPELLEE.

This case is one arising under the Chinese exclusion laws. The appellant was given a hearing before the United States commissioner and ordered deported, whereupon he appealed to the judge of the District Court for the Southern District of California, who sustained the order of the commissioner ordering the appellant deported to China. Thereupon, appellant appealed to this court.

The prima facie case of the Government was established by the witness W. A. Brazie, who testified [Tr. 7-8] that he arrested the appellant while he was working in a laundry in the city of Los Angeles, and that the appellant admitted to him that he was a Chinese person, a laborer, and that he had no certificate of resi-

dence, whereupon the Government rested and the appellant produced certain witnesses to testify in his behalf relative to his right to be and remain in the United States.

Counsel for appellant with great brevity sketches the testimony of appellant and his witnesses, and then makes the extraordinary statement that "the testimony of the defendant and his witnesses is very clear and plain to the effect that he was born in San Francisco about thirty years ago." How he arrives at his conclusion is hard to ascertain, as no place in the statement of the evidence as given in his brief is there any mention of where the appellant was born, or that he had ever been in San Francisco. However, it is clear that counsel for appellant bases his hope for a reversal of the judgment of the lower court upon his claim that this appellant was born in the United States. Of course, it makes no difference how long a Chinaman may have evaded the laws of the United States or how long he may have resided in the United States; if he is not properly a resident of the United States and has no right to be or remain here, the courts should order him deported. In this case, two witnesses testified to having known the appellant for approximately twenty years, but neither of them know anything at all about the appellant prior to that time, nor did they claim to know anything of his birth. The appellant himself did not testify before the District Court that he was born in the United States, but contented himself with a recital of his life and activities since coming to Los Angeles.

However, the District Court, should such a finding have been necessary, would have been warranted in

finding that the witnesses testifying on behalf of the appellant were not credible because of the variances in their own testimony and that of the appellant himself. On pages 18-24 of the transcript is set out a statement which was taken from the appellant immediately on his arrest by the Chinese inspector. At that time, the appellant testified that his father and his mother both died in China, and that here was no one in the United States who could testify for him, and apparently he was ignorant of the names or addresses of Chinese people in Los Angeles who had any acquaintance whatever with him, but upon his trial before the District Court he appeared with two witnesses who claim to have known him intimately for twenty years. In the same statement, he badly confused dates and places, and his testimony before the District Court was vastly different from that given to the inspector when he was arrested, as will appear from a cursory reading of the transcript.

Section 3 of the Chinese Exclusion Law as amended by the Act of May 5, 1892, provides:

“That any Chinese person or person of Chinese descent arrested under the provisions of this act or the acts hereby extended shall be adjudged to be unlawfully within the United States unless such person shall establish, by affirmative proof to the satisfaction of such justice, judge, or commissioner, his lawful right to remain in the United States.”

It was therefore necessary, under this section, for the appellant to satisfy the district judge of his right to be and remain in the United States. He made no defense

of belonging to any of the exempt classes, but apparently relied on the claim, which his counsel now makes in his brief, of nativity. However, this must absolutely fall as there is not one iota of testimony in the transcript to the effect that he was born in the United States. Being a Chinese laborer, if he was not born in the United States, he must be possessed of a laborer's certificate to entitle him to remain here, but he readily admits that he has not and never had such a certificate. Therefore, he is in the United States contrary to law and should be deported to the country from whence he came.

Counsel for appellant cites authorities on page 5 of his brief to the effect that an alien may not be deported from the United States unless such deportation be actually accomplished within three years from the date of his entry, referring to the Act of February 20, 1907, commonly known as "The Immigration Law." Counsel has confused the immigration law with the Chinese Exclusion Law. These proceedings were not instituted under the immigration law, but under the Chinese Exclusion Law of 1882-4, as amended by the Acts of 1888-1892 and 1893. Therefore, the authorities cited by appellant's counsel are entirely out of point.

We respectfully submit that the judgment of the lower court in this case should be affirmed.

ALBERT SCHOONOVER,

*United States Attorney;*

CLYDE R. MOODY,

*Assistant United States Attorney;*

*Attorneys for Appellee.*